# RECENT CASE NOTES

AGENCY—AGREEMENT WITH BROKER GIVING "EXCLUSIVE SALE."—The defendant signed a written agreement giving the plaintiff, a real estate broker, the "exclusive sale" of certain land for a specified period, promising to pay an agreed commission. The broker paid nothing for the promise nor did he in words agree to undertake the sale. But he did spend time and money trying to sell the property. Before he succeeded the defendant made the sale himself. Plaintiff sued for his commission. *Held,* that the plaintiff could not recover, since the promise was gratuitous. *Roberts v. Harrington* (1918, Wis.) 169 N. W. 603.

See COMMENTS, p. 575, *supra.*

BANKRUPTCY—INSURANCE POLICIES—RIGHTS OF TRUSTEE UNDER EXEMPTION STATUTES.—The bankrupt took out two policies of life insurance, one payable to his executors or assigns and the other to his brother and sister, with full power in the insured to change the beneficiaries. At the time of the bankruptcy his wife was the beneficiary of both policies, provided "she outlives" the insured, with power reserved in him to change the beneficiary or surrender the policies at any time, thus realizing their cash value. When the policies were demanded by his trustee in bankruptcy he contended that the beneficiary's interests could not be defeated, because of a Georgia statute which provides: "The assured may direct the money to be paid to his personal representatives or to his widow or to his children or to his assignee; and upon such direction given and assented to by the insurer no other person can defeat the same. But the assignment is good without such assent." *Held,* that the policies passed to the trustee. *Cohn v. Malone* (1919) 39 Sup. Ct. 141.

Where there is no local exemption statute, all the life and endowment policies of the bankrupt which have an actual cash value pass to the trustee. *Equitable Assurance Soc. v. Miller* (1911, C. C. A. 8th) 185 Fed. 98 (endowment); *Cohen v. Samuels* (1917) 245 U. S. 50, 38 Sup. Ct. 36 (life); see (1918) 27 YALE LAW JOURNAL, 403. And this is true although the insured has not reserved the power to change the beneficiary. *In re Boardman* (1900, D. Mass.) 103 Fed. 783 (endowment); *In re Coleman* (1905, C. C. A. 2d) 136 Fed. 818 (life). In a majority of jurisdictions statutes are in force which exempt from the claims of creditors insurance policies payable to the insured's wife or immediate relatives. Such policies do not pass to the trustee in bankruptcy, because of the exemption of sec. 6 of the Bankruptcy Act. And this section is not limited by sec. 70a. *Holden v. Stratton* (1905) 198 U. S. 202, 25 Sup. Ct. 656. Even when the insured has power to change the beneficiary, it is generally held that the policy is covered by such exemption. *In re Orear* (1911, C. C. A. 8th) 189 Fed. 888; *contra, In re Loveland* (1912, D. Mass.) 192 Fed. 1005, reversed on another point (1912, C. C. A. 1st) 200 Fed. 136. The minority view, as illustrated by the case last cited, reasons that the power to change the beneficiary gives the insured such dominion over the policy as to make it an asset of his estate. The principal case places a construction upon the Georgia statute which in effect adopts this view. If, as would seem to be true, the insured's "dominion over the policy" lies in his power to defeat the beneficiary's interest, the same result would logically be reached where the insured has power to so defeat it by surrendering the policy for cash. So it has been held. *In re White* (1909, C. C. A. 2d) 174 Fed. 333. It is made even clearer that this interest should pass as an asset, by the fact that the insured can assign it at will. See (1918) 27 YALE LAW JOURNAL, 1083. It is submitted, therefore, that if the minority doctrine be applied to such